

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1)PINNACLE PACKAGING COMPANY, )  
INC., an Oklahoma corporation, )  
2) POLO ROAD LEASING, LLC, an Okla- )  
homa limited liability company, and )  
3) J. SCOTT DICKMAN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Defendants. )

Case No. 12-CV-537-GKF-TLW

4) ONE EQUITY PARTNERS LLC, a )  
Delaware limited liability company, and )  
5) CONSTANTIA FLEXIBLES GmbH, an )  
Austrian corporation, )  
 )

**UNOPPOSED MOTION OF PLAINTIFFS FOR DETERMINATION  
ON RESPONSE REQUIREMENT, OR, IN THE ALTERNATIVE, FOR  
AN ENLARGEMENT OF TIME, AND BRIEF IN SUPPORT**

Plaintiffs, Pinnacle Packaging Company, Inc., Polo Road Leasing, LLC, and J. Scott Dickman (collectively “Plaintiffs”), hereby move the Court to determine that given the contemporaneous filing of their Amended Complaint, there is no necessity for them to respond to the pending motions to dismiss filed by the Defendants, *i.e.*, *Defendant Constantia Flexibles GmbH’s Motion to Dismiss and Brief in Support* [DKT. 26], and *Defendant One Equity Partners LLC’s Motion to Dismiss and Brief in Support* [DKT. 27] (collectively, the “Motions”), and that if such determination cannot be made, that they be given an enlargement of time of 20 days from the date of this Court’s Order hereon to prepare appropriate responses. In support of this Motion, the Plaintiffs show the Court:

1. Defendants, while making limited appearances solely to contest jurisdiction and without waiver to those and other defenses, do not oppose this Motion.

2. Rule 15(a)(1)(B) Fed.R.Civ.P. obviates the necessity for a response to the Motions.

3. *Harnish v. Widener University School of Law*, 2012 WL 2576353 (D.N.J.) addressed the effect of the filing of an amended complaint on a pending motion to dismiss, and determined under Rule 15 (a)(1)(B) that a timely-filed amended complaint renders a motion to dismiss moot because it supersedes the original complaint.

4. In the event the Court determines a response or responses to the Motions are required, the Plaintiffs respectfully request an enlargement of 20 days from the Court's ruling hereon to file their responses.

5. Plaintiffs have previously received one extension of time of twenty (20) days for their responses.

6. The parties have also agreed that the Defendants in the Amended Complaint do not have to answer, move, or otherwise respond to the Amended Complaint until all Defendants are served which shall be determined by good faith notice between Oklahoma counsels for the current parties.

WHEREFORE, Plaintiffs respectfully request that their Motion be granted and that they be given other just and appropriate relief.

s/Laurence L. Pinkerton

Laurence L. Pinkerton, OBA #7168  
Pinkerton & Finn, P.C.  
Penthouse Suite  
15 East 5th Street  
Tulsa, OK 74103-4303  
Tele: 918-587-1800  
Fax: 918-582-2900  
ATTORNEYS FOR PLAINTIFFS

### CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2012, I electronically transmitted the foregoing pleading, to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

John D. Russell, Esq.  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS  
321 S. Boston Ave., Suite 800  
Tulsa, Oklahoma 74103-3318

Gabrielle Gould, Esq.  
Cheryl Howard, Esq.  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
601 Lexington Ave., 31st Floor  
New York, NY 10022

/s/ Laurence L. Pinkerton